

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 99-1046

JOHN SZYKA,

Plaintiff - Appellant,

versus

FARM BUREAU, Hendersonville, North Carolina;
KIM BANKS,

Defendants - Appellees.

Appeal from the United States District Court for the Western District of North Carolina, at Asheville. Lacy H. Thornburg, District Judge. (CA-98-88-1-T)

Submitted: February 26, 1999

Decided: April 1, 1999

Before WILKINS and HAMILTON, Circuit Judges, and HALL, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

John Szyka, Appellant Pro Se. Alan Dale McInnes, CLONINGER, BARBOUR & ARCURI, P.A., Asheville, North Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Szyka appeals the district court's order dismissing his complaint for lack of subject matter jurisdiction. Appellees, Farm Bureau and Kim Banks, have filed a motion to dismiss this appeal asserting that Appellant's, John Szyka, notice of appeal was untimely filed. Although the district court's judgment was marked as "filed" on October 27, 1998, it was not entered on the district court's docket sheet until November 2, 1998. See Wilson v. Murray, 806 F.2d 1232, 1234-35 (4th Cir. 1986) (pursuant to Rules 58 and 79(a) of the Federal Rules of Civil Procedure, the date of the judgment that was entered on the docket sheet is the date we take as the effective date of the district court's decision). Thus, Szyka timely filed his notice of appeal on November 27, 1998. See Fed. R. App. P. 4(a)(1). Accordingly, we deny Appellees' motion to dismiss this appeal.

We have reviewed the record and the district court's opinion accepting the recommendation of the magistrate judge and find no reversible error. Accordingly, we affirm on the reasoning of the district court. See Szyka v. Farm Bureau, No. CA-98-88-1-T (W.D.N.C. Nov. 2, 1998). We also deny Szyka's motion to remand this case to the district court and deny Szyka's motion for a ten day extension to file an additional supplemental brief. We dispense with oral argument because the facts and legal contentions

are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED